



## LEGAL UPDATE

April 14, 2010

### **New Law Bans Sending Obscene Electronic Communications to Minors** **G.L. c. 272, § 31 Is Amended to Close Loophole**

On April 12, 2010 Governor Patrick signed legislation (effective in 90 days) that prohibits sending obscene materials to minors via electronic communications such as email, text and instant messages. This new law was enacted in response to *Commonwealth v. Zubiel*, 456 Mass. 27 (2010), where the SJC found that the existing definition of "matter" in G.L. c. 272, § 31 did not prohibit obscene computer texts and online chats.

G.L. c. 272, § 31's new definition of "matter" is:

Any handwritten or printed material, visual representation, live performance or sound recording, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances, **or any electronic communication including, but not limited to, electronic mail, instant messages, text messages, and any other communication created by means of use of the Internet or wireless network, whether by computer, telephone, or any other device or by an transfer of signs, signals, writing, images, sounds, data, or intelligence of an nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system.** (Emphasis added).

G.L. c. 272, § 31's new definition of "visual material" is:

Any motion picture film, picture, photograph, videotape, book, magazine, pamphlet that contains pictures, photographs or similar visual representations or reproductions, or depiction by computer,

**telephone or any other device capable of electronic data storage or transmission.** Undeveloped photographs, pictures, motion picture films, videotapes and similar visual representations or reproductions may be visual materials notwithstanding that processing, development or similar acts may be required to make the contents thereof apparent. (Emphasis added).